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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,516	03/06/2002	Peter Wagner	P/ 37-171	9644
2352	7590	09/19/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			CONLEY, SEAN EVERETT	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,516

Applicant(s)

WAGNER, PETER

Examiner

Sean E. Conley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26, 27, 30-54, 56 and 57 is/are allowed.
- 6) ☒ Claim(s) 28, 29 and 55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claims 28, 29, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner (U.S. Patent No. 5,352,416) in view of Sagara (JP363115022A).

Regarding claims 28 and 55, Wagner discloses a sterilization container for holding sterilized items to be passed through a sterilization process in a sterilizer that includes a vacuum drying phase and a ventilation phase, the container is capable of remaining hermetically sealed and maintaining a vacuum established during the sterilization process; the container having a valve arrangement permitting an exchange

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of a medium between the sterilizer and the sterilization container during the sterilization process, the valve arrangement comprising, an open position of the valve arrangement to permit the exchange of the medium and a closed position of the valve arrangement operable to prevent the exchange of the medium; and a temperature sensor in the valve arrangement operable to prevent the valve arrangement from moving to the closed position until a set temperature cycle of the sterilizer is complete (see figures 1 and 10, column 1, lines 35-63, and column 4, lines 9-63). Wagner does not teach or disclose a temperature sensor that is protected from premature cooling.

Sagara discloses a means for more accurately measuring the temperature of a liquid. A temperature sensor (4) is used to measure the temperature of water in a water tank (17) of a cooling tower. The temperature sensor (4) has a cover (10) which is made of styrofoam and functions to shield the sensor from the external environment. The styrofoam cover (10) prevents the temperature from rising due to the radiant heat of the sunshine and the external air temperature, and also eliminates dew condensation due to the variation in external air temperature and water temperature. Therefore, the temperature sensor (4) accurately measures the temperature of the water and is unaffected by variables that would cause the measurements to be incorrect (see figure and abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention of Wagner and add a cover over the temperature sensor as taught by Sagara so that the temperature sensor would

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be unaffected by external variables such as condensation which causes variation in temperature (heating and cooling) and inaccurate temperature measurements.

Regarding, claim 29, Wagner discloses a temperature sensor that exhibits hysteresis based on temperature (see column 1, lines 15-32 and column 4, lines 48-53).

Allowable Subject Matter

2. Claims 26, 27, 30-54, 56 and 57 are allowed.

The following is an examiner's statement of reasons for allowance: The prior art, alone or in combination, fails to teach or suggest a sterilization container for holding items to be passed through a sterilization process that includes a vacuum drying phase and a ventilation phase, the container capable of remaining hermetically sealed and maintaining a vacuum established during the sterilization process; the container having a valve arrangement permitting a medium exchange between an inside and an outside of the sterilization container during the sterilization process, the valve arrangement comprising; an open position of the valve arrangement to permit the exchange of the medium and a closed position of the valve arrangement to prevent the exchange of the medium; a valve body responsive to a pressure flow to urge the valve arrangement to the closed position; a stop in the valve arrangement, the stop having a stop position to prevent the valve arrangement from moving to the closed position; and a temperature sensor coupled to the stop and operable to urge the stop away from the stop position based on a set temperature reached before or during the ventilation phase.

Furthermore, the prior art, alone or in combination, fails to teach a method for operating

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a valve in a sterilization container for holding items to be passed through a sterilization process in a sterilizer, comprising: setting a blocking pin in a position to cooperate with a stop to prevent closure of the valve; exposing the sterilization container and the valve to a sterilization phase while maintaining the blocking pin position; increasing a temperature applied to the sterilization container and valve to heat the valve beyond a set temperature; moving the blocking pin to a position to prevent cooperation with the stop in response to obtaining a temperature for the valve above the set temperature; closing the valve in response to a pressure differential, whereby the sterilization container maintains a vacuum.

The closest prior art to the applicant's claimed invention are U.S. Patent No. 5,352,416 to Wagner.

Wagner discloses a sterilization container for holding sterilized items to be passed through a sterilization process in a sterilizer that includes a vacuum drying phase and a ventilation phase, the container is capable of remaining hermetically sealed and maintaining a vacuum established during the sterilization process; the container having a valve arrangement permitting an exchange of a medium between the sterilizer and the sterilization container during the sterilization process, the valve arrangement comprising, an open position of the valve arrangement to permit the exchange of the medium and a closed position of the valve arrangement operable to prevent the exchange of the medium; and a temperature sensor in the valve arrangement operable to prevent the valve arrangement from moving to the closed position until a set temperature cycle of the sterilizer is complete (see figures 1 and 10,

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column 1, lines 35-63, and column 4, lines 9-63). However, Wagner and the prior art do not teach or fairly suggest a stop or blocking pin in the valve arrangement to prevent the valve arrangement from moving to the closed position; and a temperature sensor that is coupled to the stop or blocking pin that is operable to urge the stop away from the stop position based on a set temperature reached before or during the ventilation phase.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

3. Applicant's arguments filed July 1, 2005, with respect to the rejection of claims 26-57 under 35 U.S.C. §112, first paragraph, have been fully considered and are persuasive. The rejection of claims 26- 57 under 35 U.S.C. §112, first paragraph has been withdrawn.

4. Applicant's arguments filed July 1, 2005 with respect to the rejection of claims 28, 29, and 55 under 35 U.S.C. §103 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Sagara teaches that in the art of measuring a temperature using a temperature sensors it is known to provide protection for the sensor so that the sensor functions accurately when taking measurements and is not affected by external variables. Therefore, based on this teaching in the art of temperature sensors it would have been obvious to combine a means for protecting the sensor of Wagner in order to protect the sensor from external variables so that the sensor accurately measures the temperature.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 15, 2005

SEC

X.C.C.


JOHN KIM
SUPERVISORY PATENT EXAMINER